

Draft for consultation

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 S T A T U T O R Y   I N S T R U M E N T S
 

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**2016 No.****PUBLIC SERVICE PENSIONS, ENGLAND AND WALES****EDUCATION, ENGLAND AND WALES**
**The Teachers' Pensions Schemes (Miscellaneous Amendments)  
Regulations 2016**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972 ('the 1972 Act')(a) and sections 1(1)(b), (2)(d)(c) and (4), 2(d), 3(1), (2), (3)(a) and (c), 8(1)(a) and (2)(a), and paragraph (c) of the definition of "employer" in section 37 of, and paragraph 4 of Schedule 1, paragraph 4(a) of Schedule 2 and Schedule 3 to, the Public Service Pensions Act 2013 ('the 2013 Act').

The Secretary of State has consulted with the persons referred to in section (9)(5) of the 1972 Act and in accordance with section 21 of the 2013 Act the Secretary of State has consulted the representatives of such persons as appear to the Secretary of State likely to be affected by these Regulations.

In accordance with section 9(1)(e) of the 1972 Act and section 3(5) of the 2013 Act, these Regulations are made with the consent of the Treasury.

**Citation and commencement**

1. These Regulations may be cited as the Teachers' Pensions Schemes (Miscellaneous Amendments) Regulations 2016 and come into force on [ x ] 2016.

**Amendments of the Teachers' Pensions Regulations 2010**

2. The Teachers' Pensions Regulations 2010(f) are amended in accordance with regulations 3 to 7.

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- (a) 1972 c.11. Section 9 was amended by sections 4, 8 and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7); paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48); article 107 of S.I. 2001/3649; and article 5 of, and paragraph 27 of Schedule 2 to, S.I. 2010/1158. Section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990.
- (b) See section 1(4) of the 2013 Act for the meaning of "scheme regulations".
- (c) See paragraph 4 of Schedule 1 to the Act for the meaning of "teachers".
- (d) See section 2(2) of the 2013 Act for the meaning of "responsible authority".
- (e) See S.I. 1981/1670.
- (f) S.I. 2010/990; relevant amending instruments are S.I. 2011/614, 2012/673, 2012/2270, 2014/424 and 2014/2651.

**Amendment to regulation 57 (election to receive phased retirement benefits)**

3. In paragraphs 2(b) and 4(c) of regulation 57 for “6 months” substitute “12 months”.

**Amendment to regulation 59 (cessation of phased retirement benefits)**

4. In paragraphs (1)(a) and (b) of regulation 59 for “6 months” substitute “12 months”.

**Amendment to regulation 83 (death grant: death in service)**

5. In regulation 83 after paragraph (3) insert —
- “ (3A) Paragraph (3) does not apply if —
- (a) D made an application before his death under regulation 107 (payment of benefits on application to the Secretary of State) for retirement benefits on the basis that Case C, and no other Case (apart from Case A), applied to D’s reckonable service;
  - (b) at the same time that D made the application mentioned in sub-paragraph (a), D made an application for commutation of the ill-health pension (and any total incapacity pension payable under regulation 65(total incapacity benefits)) under regulation 118 (commutation : serious ill health) ; and
  - (c) following consideration of the applications mentioned in sub-paragraphs (a) and (b), the Secretary of State determines that the ill-health pension and, if applicable, any total incapacity pension payable with it, should be commuted.”.

**Amendment to regulation 85 (death grant: death out of service)**

6. In regulation 85 after paragraph (3) insert—
- “(3A) Paragraph (3) does not apply if—
- (a) D made an application before his death under regulation 107 (payment of benefits on application to the Secretary of State) for retirement benefits on the basis that Case C, and no other Case (apart from Case A), applied to D’s reckonable service;
  - (b) at the same time that D made the application mentioned in sub-paragraph (a), D made an application for commutation of the ill-health pension (and any total incapacity pension payable under regulation 65(total incapacity benefits) under regulation 118 (commutation : serious ill health) ; and
  - (c) following consideration of the applications mentioned in sub-paragraphs (a) and (b), the Secretary of State determines that the ill-health pension and, if applicable, any total incapacity pension payable with it, should be commuted.”.

**Amendment to paragraph 3 of Schedule 7 (retirement benefits)**

7. In Schedule 7 —
- (a) for paragraph 3 substitute—
- “3.—(1) Except as provided in paragraph 4, a person (P) falls within this paragraph if—
- (a) P satisfies either Conditions 1, 2 and 3 or Condition 4, and
  - (b) P makes an application under regulation 107 for retirement benefits on the basis that Case C, and no other Case (apart from Case A), applies to P’s reckonable service.
- (2) Condition 1 is that P left all pensionable employment because P was incapacitated.
- (3) Condition 2 is that P makes the application under regulation 107—
- (a) before leaving excluded employment, or
  - (b) within 2 years of the last day of pensionable employment.

(4) Condition 3 is that immediately before making the application under regulation 107 P is incapacitated and is likely to be incapacitated permanently.

(5) Condition 4 is that P's ability to carry out any work is impaired by more than 90% and is likely to be impaired by more than 90% permanently.

(6) Where P satisfies Conditions 1, 2 and 3, the illness or injury P relies upon in the application under regulation 107 must be—

- (a) the same illness or injury which was the reason for P leaving pensionable employment, or
- (b) connected to or consequent upon that injury or illness.”,

(b) in paragraph 4 after sub-paragraph (2) insert—

“(2A) But Condition A does not apply if—

- (a) D made an application to the Secretary of State before D's death for retirement benefits on the basis that Case C, and no other case (apart from Case A), applied to D's reckonable service;
- (b) at the same time that D made the application mentioned in paragraph (a), D made an application for commutation of the ill-health pension (and any total incapacity pension payable under regulation 65) under regulation 118 (commutation: serious ill health); and
- (c) following consideration of the applications mentioned in paragraphs (a) and (b), the Secretary of State determines that the ill-health pension and, if applicable, any total incapacity pension payable with it, should be commuted.”,

(c) in paragraph 10 after sub-paragraph (2), insert—

“(3) P does not fall within paragraph 10 if—

- (a) P makes the application mentioned in sub-paragraph (1)(e);
- (b) P's application is made in circumstances where the provisions of paragraph 12(1) or (3)(b) apply; and
- (c) P returns to pensionable or excluded employment before the entitlement day specified in P's application.”.

#### **Amendments of the Teachers' Pension Scheme Regulations 2014**

**8.** The Teachers' Pension Scheme Regulations 2014(a) are amended in accordance with regulations 9 to 19.

#### **Amendment to regulation 74 (meaning of “actuarial adjustment”)**

**9.** For regulation 74 substitute—

“**74.**—(1) In these Regulations, “actuarial adjustment” means the actuarial adjustment that is applied when calculating the annual rate of pension payable to—

- (a) a member who, on the entitlement day for a pension other than an age retirement pension or an ill-health pension, has not reached normal pension age; or
- (b) an active member or a deferred member who becomes a pensioner member after reaching normal pension age.

(2) In the case of an actuarial adjustment applied under paragraph (1)(b)—

- (a) the actuarial adjustment only relates to a period of service by the active member or the deferred member after reaching normal pension age; and

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(a) S.I. 2014/512, to which there are amendments not relevant to these Regulations.

- (b) the actuarial adjustment must only be applied to the pension accrued by the active member or the deferred member before reaching normal pension age.”.

**Amendment to regulation 89 (interpretation of Chapter: average annual rate)**

10. In regulation 89(1), for the definition of “average annual rate” substitute the following definition—

“ “average annual rate” means the average rate of pensionable earnings in a 12 month period”.

**Amendment to regulation 90 (the reduced annual rate condition)**

11. In regulation 90(c), for “6 months” substitute “12 months”.

**Amendment to regulation 91 (the new employment condition)**

12. In regulation 91(c), for “6 months” substitute “12 months”.

**Amendment to regulation 97 (cessation of phased retirement pension)**

13. In regulation 97(b) (i) and (ii), for “6 months”, substitute “12 months”.

**Amendment to regulation 104 (entitlement to early retirement pension)**

14. In regulation 104, after paragraph (1) insert—

“(1A) P is not entitled to payment of an early retirement pension from the entitlement day if—

- (a) P has applied under regulation 162 for payment of an early retirement pension;
- (b) P’s application is made in accordance with regulation 103(2) or (4)(b); and
- (c) P returns to eligible employment before the entitlement day specified in P’s application.”.

**Amendment to regulation 110 (entitlement to ill-health pension)**

15. In regulation 110—

- (a) in paragraph (3)(a) for “eligible employment” substitute “pensionable service”,
- (b) after paragraph (3) insert—

“(3A) Where paragraph (3) applies, the illness or injury which P relies upon in his ill-health application to meet the incapacity condition must be—

- (a) the same illness or injury which was the reason for P leaving eligible employment;  
or
- (b) connected to or consequent upon that injury or illness.”.

**Insertion of regulation 112A (when ill-health pension is taken to become payable before death of member : commutation of whole penions (serious ill-health) )**

16. After regulation 112 (when ill-health pension does not become payable) insert—

**“When ill-health pension is taken to become payable before death of member : commutation of whole pension (serious ill-health)**

**112A.—**(1) An ill-health pension is taken to become payable before the death of a member (D) if either paragraph (2) or (3) applies.

(2) This paragraph applies if—

- (a) before D's death D made an application under regulation 162 for payment of an ill-health pension;
- (b) at the same time as D made the application under regulation 162, D made an application under regulation 171 (commutation of whole pension (serious ill-health)) for commutation of the ill-health pension; and
- (c) following consideration of the applications mentioned in sub-paragraphs (a) and (b) the Secretary of State determines that the ill-health pension should be commuted.

(3) This paragraph applies if—

- (a) before D's death D made an application under regulation 162 for payment of an ill-health pension and a total incapacity pension;
- (b) at the same time as D made the application under regulation 162, D made an application under regulation 171 (commutation of whole pension (serious ill-health)) for commutation of the ill-health pension and the total incapacity pension; and
- (c) following consideration of the applications mentioned in sub-paragraphs (a) and (b) the Secretary of State determined that the ill-health pension and total incapacity pension should be commuted.

**Amendment to regulation 139 (death in service grant)**

17. In regulation 139, after paragraph (2) insert—

“(2A) For the purposes of paragraph (2), an ill-health pension and, if applicable, a total incapacity pension are taken to become payable if—

- (a) before D's death D made an ill-health application;
- (b) at the same time as D made the ill-health application, D made an application under regulation 171 (commutation of whole pension (serious ill-health)) for commutation of the ill-health pension and, if applicable, a total incapacity pension; and
- (c) following consideration of the applications mentioned in sub-paragraphs (a) and (b), the Secretary of State determines that the ill-health pension and, if applicable, any total incapacity pension payable with it, should be commuted.”.

**Amendment to regulation 140 (death out of service grant)**

18. In regulation 140, after paragraph (2) insert—

“(2A) For the purpose of paragraph (2), an ill-health pension and, if applicable, a total incapacity pension are taken to become payable if—

- (a) before D's death D made an ill-health application;
- (b) at the same time as D made the ill-health application, D made an application under regulation 171 for commutation of the ill-health pension and, if applicable, a total incapacity pension and;
- (c) following consideration of the applications mentioned in sub-paragraphs (a) and (b), the Secretary of State determines that the ill-health pension and, if applicable, any total incapacity pension payable with it, should be commuted.”.

**Amendment to paragraph 8 (ceasing to be an accepted employer) of Schedule 1 (eligible employment)**

19. In paragraph 8 of Schedule 1, in sub-paragraph (1), for “scheme employer” substitute “scheme manager”.

## Draft for consultation

Signatory text

Address  
Date

*Name*  
Parliamentary Under Secretary of State  
Department

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make a number of amendments to the Teachers' Pensions Regulations 2010 and the Teachers' Pension Scheme Regulations 2014.

The Teachers' Pensions Regulations 2010 are amended to :

- change the period of a member's pensionable earnings that is relevant for the purposes of an application for phased retirement from 6 months to 12 months (regulations 3 and 4);
- provide that serious ill-health commutation of an ill-health pension and, if applicable, any total incapacity pension payable with it, takes effect from the date of the Secretary of State's decision to grant it and a death grant (a separate pension benefit) is not paid in its place in the event that the applicant dies after the decision is made but before the first payment of the ill-health pension is due (regulations 5, 6 and 7);
- provide that an applicant for ill-health retirement benefits does not have to demonstrate permanent incapacity at the date of leaving employment but only at the time of the application; and it is clarified that the illness or injury which was the reason for the member leaving work must be the same illness or connected to or consequent upon the illness or injury relied upon in the application for ill-health benefits (regulation 7);
- provide that an out of service early retirement application is voided if the member returns to eligible employment before the entitlement day specified in the member's application (regulation 7).

The Teachers' Pension Scheme Regulations 2014 are amended to:

- clarify that where an actuarial adjustment is applied in the case of a person who becomes a pensionable member of the scheme after reaching normal pension age, that adjustment is applied only to the accrued pension for the period prior to the person becoming a pensionable member (regulation 9) ;
- change the period of a member's pensionable earnings that is relevant for the purposes of an application for phased retirement from 6 months to 12 months; the definition of "average annual rate" is amended accordingly (regulations 10 to 13);
- provide that an out of service early retirement application is voided if the member returns to eligible employment before the entitlement date specified in the member's application (regulation 14) ;
- clarify that the illness or injury which is relied upon in an ill-health benefits application must be the same illness, or connected to or consequent upon, the illness or injury which was the reason for the member leaving service (regulation 15) ;

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- provide that serious ill-health commutation of an ill-health pension and, if applicable, any total incapacity pension payable with it, takes effect from the date of the Secretary of State's decision to grant it and death grant (a different pensions benefit) is not paid in its place in the event that the applicant dies after the decision is made but before the first payment of the ill-health pension is due (regulations 16 to 18);
- correct a minor error by substituting a reference to "scheme manager" for "scheme employer" in paragraph 8 of Schedule 1 (regulation 19).

An impact assessment has not been produced for this instrument as it has no impact on business or civil society organisations. The instrument has a minimal impact on the public sector.